



**LEVITT LAW**  
A PROFESSIONAL CORPORATION



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Downtown Diversion, Inc. and USA Waste of California, Inc. District manager: Luis Flores 2424 East Olympic Boulevard, Bld. 3 Los Angeles, CA 90021	Downtown Diversion, Inc. and USA Waste of California, Inc. District manager: Mark Grady 2424 East Olympic Boulevard, Bld. 3 Los Angeles, CA 90021
Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100	Catherine McCabe Administrator U.S. Environmental Protection Agency Mail Code: 110 IA 1200 Pennsylvania Avenue, N.W. Washington, DC 20460
Mr. Jeff Sessions U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-001	Samuel Unger, Executive Officer Regional Water Quality Control Board Los Angeles Region 320 West Fourth St., Ste. 200 Los Angeles, CA 90013
Alexis Strauss Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	

**Notice of Violations and Intent to File Suit under the Clean Water Act**

To Whom It May Concern:

Levitt Law, APC ("Levitt Law") represents Our Clean Waters ("OCW"), a non-profit corporation organized under the laws of the State of California. This letter is to give notice that Levitt Law, on behalf of OCW, intends to file a civil action against Downtown Diversion, Inc. and USA Waste of California, Inc. Downtown Diversion, Inc. (a California "merged out" corporation), which appears to be now consolidated into USA Waste of California, Inc. for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Downtown Diversion, Inc. and USA Waste of California, Inc.'s Facility located at 2424 East Olympic Boulevard, Building 3, Los Angeles, CA 90021 (the "Facility").

OCW is concerned with the environmental health of the Los Angeles River, on behalf of the public that uses and enjoys said Water Bodies, its inflows, outflows, and other waters of the Affected Watershed. The public's use and enjoyment of these waters is negatively affected by the pollution caused by Downtown Diversion, Inc. and USA Waste of California, Inc.'s operations. Additionally, OCW acts in the interest of the general public to prevent pollution in

these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Downtown Diversion, Inc. and USA Waste of California, Inc.'s unlawful discharge of pollutants from the Facility via an indirect method into the Los Angeles River. The Facility is discharging storm water pursuant to the National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit").<sup>1</sup> The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As appropriate, OCW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." Investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(b)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by the Clean Water Act Section 505(b), this Notice of Violations and Intent to File Suit provides notice to Downtown Diversion, Inc. of the violations that have occurred and which continue to occur at the Facility. Consequently, OCW hereby places Downtown Diversion, Inc. on formal notice, that after the expiration of sixty (60) days from the date of this Notice of Violations and the Intent to Sue, OCW intends to file suit in federal court against Downtown Diversion, Inc. under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and the General Permit. The violations are described more fully below.

During the 60-day notice period, OCW is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Downtown Diversion, Inc. contact OCW's attorneys at Levitt Law within the next twenty (20) days so these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

## **I. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The facility is located at 2424 East Olympic Boulevard, Building 3, Los Angeles, CA 90021, approximately 200 feet to the southeast of the intersection of East Olympic Boulevard and South Santa Fe Avenue. The facility is leased by DDI and owned by Southern California Gas Company. The receiving water for the facility is the Los Angeles River. The facility is classified under Standard Industrial Classification ("SIC") code 5093. The Facility includes one 60,000 square foot warehouse building is located on the northeastern portion of the facility and houses administrative activities, construction and demolition debris (C&D) tipping floor, recycling area and equipment, and loading area for transfer trucks. The site also has two scales, bin and

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<sup>1</sup> On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial General Permit except for purposes of enforcement actions brought pursuant to the prior permit.

container storage, truck and equipment maintenance, and collection vehicle parking. Possible pollutants from the Facility include: Total Suspended Solids ("TSS"), Oil and Grease ("O&G"), Aluminum ("Al"), Iron ("Fe"), Lead ("Pb"), Zinc ("Zn") and other pollutant Stormwater from the Facility discharges, via the local storm sewer system and/or surface runoff indirectly into the Los Angeles River

#### **B. The Affected Water**

The Los Angeles River is a water of the United States. The CWA requires that water bodies such as the Los Angeles River meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Los Angeles River include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the Los Angeles River and the overall Affected Watershed, and threatens the beneficial uses and ecosystems of these waters, which includes habitats for threatened or endangered species.

## **II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311(a)). Further, it is unlawful to discharge in violation of the terms and conditions of an NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of storm water associated with industrial activities). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial General Permit in order to lawfully discharge.

Downtown Diversion Inc. has submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the Industrial General Permit since at least 1992 (WDID Number 4 19I021742). However, information available to OCW indicates that storm water discharges from the Facility have violated the terms of the Industrial General Permit, and has been, and continues to violate the CWA. Apart from discharges that comply with the Industrial General Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

Pursuant to Section I.A.8 of the Industrial General Permit, a facility operator must comply with all conditions of the Industrial General Permit. (Industrial General Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."]). Failure to comply with the Industrial General Permit is a Clean Water Act violation. (Industrial General Permit §XXI.A.). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial General Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial General Permit renewal application. As an enrollee, Downtown Diversion Inc. has a duty to comply with the Industrial General Permit and is subject to all of the provisions therein.

#### **A. Discharges in Excess of BAT/BCT Levels**

The Effluent Limitations of the Industrial General Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best

available technology economically achievable ("BAT") for toxic pollutants<sup>2</sup> and best conventional pollutant control technology ("BCT") for conventional pollutants. Industrial General Permit § I(D)(32), II(D)(2); Previous Industrial General Permit, Order Part B(3). Specifically, the Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (Industrial General Permit §I(D)(32); see also §V.A.). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. These benchmark levels are reflected as Numeric Action Level (NAL) values in the current Industrial General Permit (also known as Benchmark values in the Previous Industrial General Permit). These levels are set at the maximum pollutant concentration present to determine if an industrial Facility is employing BAT and BCT. (See Attachment 1 of this Notice for applicable Benchmark Values).<sup>3</sup>

Additionally, the Previous Industrial General Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. See Previous Industrial General Permit § VIII. The Previous Industrial General Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial General Permit. *Id.* Downtown Diversion, Inc. falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the previous Industrial General Permit during its effective period.

Downtown Diversion, Inc.'s self-reporting data shows a complete failure to adequately report numerical pollutant discharge values in every instance over at least the past 5 years. Iron results were as much as 8.5 times the NAL value and COD results were as much as 3.4 times the NAL value. Downtown Diversion Inc. stopped testing for parameters Al, Cu, Pb, Zn, and COD in the years 2015-2016. This may be explained by language in the General Permit pertaining to facilities designated under SIC Code 5093, ostensibly exempting dischargers designated under this code like Downtown Diversion Inc. However, even if this language in the 2015 Permit applies to the Facility, it does not exempt them from continuing to test for parameters Al, Cu, Pb, Zn, and COD because it has a record of historical exceedances for them. The 2015 Permit makes clear that if a discharger has a record of exceeding certain parameters, it must continue to test for them regardless of possible exceptions.

Another issue with the Annual Report from the years 2015-2016 is the list of impaired parameters pertaining to the Facility (the HUC-10 list). This list requires an assessment of the site, and if there is any evidence of the listed pollutants being present, the discharger must analyze for them. Evidence shows that Downtown Diversion Inc. has had a history of HUC-10 parameter exceedances, such as Cu, Fe, and Zn, but in the 2015-2016 Report, Downtown

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<sup>2</sup> BAT is defined at 40 C.F.R. § 437.1 et seq. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

<sup>3</sup> The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP"). See 73 Fed. Reg. 56,572 (Sept 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharged From Industrial Activities).

Diversion Inc. claimed under penalty of perjury that these were not present at the site, despite evidence to the contrary. Downtown Diversion Inc., has also stopped testing for COD, even though it has a history of exceeding this parameter. Both the Industrial General Permit and the Clean Water Act make it unlawful to falsify reports, punishable by a \$10,000 fine or by imprisonment, or both (Industrial General Permit § XXI.N; 33 U.S.C. § 1319(c)(1)).

Based on Downtown Diversion, Inc.'s self-reporting data and/or lack thereof, Downtown Diversion, Inc.'s self-reporting of industrial storm water discharges shows a pattern of exceedances of Benchmarks and NAL values, especially as it pertains to the parameters TSS, Iron, and COD, Aluminum, Specific Conductance, and others. This pattern of exceedances of Benchmarks and NAL values indicate that Downtown Diversion, Inc. has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial General Permit and Previous Industrial General Permit. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9<sup>th</sup> Cir. 1988).

OCW alleges and notifies Downtown Diversion, Inc. and USA Waste of California, Inc. that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark Values for Aluminum, Iron, and Zinc. Downtown Diversion, Inc. and USA Waste of California, Inc.'s ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values, and BAT and BCT based levels of control, also demonstrate that Downtown Diversion, Inc. and USA Waste of California, Inc. has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Downtown Diversion, Inc. and USA Waste of California, Inc.'s failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day Downtown Diversion, Inc. and USA Waste of California, Inc. discharges without meeting BAT/BCT. OCW alleges that Downtown Diversion, Inc. and USA Waste of California, Inc. has discharged stormwater containing excessive levels of pollutants from the Facility to the Los Angeles River during significant local rain events over 0.2 inches in the last three (3) years. Every significant rain event that has occurred in the last three (3) years represents a discharge of polluted stormwater run-off into the Los Angeles River. Downtown Diversion, Inc. and USA Waste of California, Inc. is subject to civil penalties for each violation of the Industrial General Permit and the CWA within the past three (3) years.

#### **B. Discharges Impairing Receiving Waters**

The CWA and Industrial General Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (2). The Industrial General Permit also prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. See Industrial General Permit, Section VI (b-c); Previous Industrial General Permit Order, Part C (1). Receiving Water Limitations of the Industrial General Permit prohibit storm water discharges that cause or contribute to an

exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. See Industrial General Permit, Section VI (a); Previous Industrial General Permit Order, Part C (2). Applicable WQS are set forth in the California Toxic Rule ("CTR")<sup>4</sup> and Los Angeles Water Quality Control Plan (Region 4) (the "Basin Plan").<sup>5</sup> Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan.

The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000). See <http://www.waterboards.ca.gov/losangeles/rwp/industrial/industrial.htm> to reference the Basin Plan. The beneficial uses of the Los Angeles River and its tributaries include groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, and rare, threatened or endangered species. Downtown Diversion Inc.'s ongoing pollution of the Los Angeles River greatly frustrates efforts undertaken by the stakeholders of Los Angeles County who have devoted time and resources to make the River cleaner and more accessible to the public.

The Basin Plan establishes WQS for all Inland Surface Waters, including the Affected Water Body Watershed, which contain, but are not limited, to the following standards:

- That "toxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-20.
- That "waste discharges shall not in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-14.
- That "inland surface waters shall not contain suspended or settleable material in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors." *Id.* at 4-16.
- That "the pH of Inland surface waters shall not be raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors." *Id.* at 4-18.
- That "waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-10.
- That "waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10.
- That "waste discharges shall not result in increases in COD levels in inland surface waters which exceed values shown in Table 4-1 or which adversely affect beneficial uses." *Id.* at 4-9.

OCW alleges that Downtown Diversion Inc.'s storm water discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial General Permit and the WQS set forth in the Basin Plan and CTR, and is clearly in violation of the CWA. These allegations are

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<sup>4</sup> The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

<sup>5</sup> The Basin Plan is published by the Los Angeles Regional Water Quality Control Board and can be accessed at

based on Downtown Diversion Inc.'s self-reported data submitted to the Los Angeles Regional Water Quality Control Board. The sampling results indicate that Downtown Diversion Inc.'s discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS (See Attachment 1).

OCW alleges that each day that Downtown Diversion Inc. has discharged storm water from the Facility, Downtown Diversion Inc.'s storm water has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Los Angeles River, and the Affected Watershed. OCW alleges that Downtown Diversion Inc. has discharged storm water exceeding Receiving Water Limitations and/or WQS from the Facility to the Los Angeles River, and the Affected Watershed during significant local rain events over 0.1 inches in the last five (5) years (See Attachment 3). Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial General Permit and the CWA. Downtown Diversion Inc. is subject to penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

#### **C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**

The Industrial General Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). See Industrial General Permit, Section X (B); Previous Industrial General Permit, Part A (I) (a) and Provision E(2). The Industrial General Permit also requires dischargers to make all necessary revisions to the existing SWPPP promptly. See Industrial General Permit, Section X (B); Previous Industrial General Permit Order, Part E (2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Downtown Diversion Inc.'s pollutant sources, a description of the BMPs that will reduce or prevent pollutants in storm water discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a Facility manager determines that the SWPPP is in violation of any requirements of the Industrial General Permit. See Industrial General Permit, Section X (A); Previous Industrial General Permit, Part A.

Based on information available to OCW, Downtown Diversion Inc. has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements stated in Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit. For Example, Downtown Diversion Inc. SWPPP does not include and/or Downtown Diversion Inc. has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A (8) of the Industrial General Permit as evidenced by the data in Attachment 1. The Facility's storm water samples have consistently exceeded EPA Benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Downtown Diversion Inc. has failed to sufficiently update and revise the Facility's SWPPP. The facility's SWPPP has therefore never achieved the Industrial General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

Accordingly, Downtown Diversion Inc. has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit, and Downtown Diversion Inc. will continue to be in violation every day until it develops and implements an adequate SWPPP. Downtown Diversion Inc. is subject to penalties for each violation of the Industrial General Permit and the CWA occurring within the past five (5) years.

**D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations**

The Industrial Storm Water Permit requires Facility operators to develop and implement a Monitoring Implementation Program ("MIP"). See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B (I) and Order, Part E (3). The Industrial General Permit requires that the MIP ensures that the Facility adequately detects and measures its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit. *Id.* Facility operators must ensure that their MIP practices reduce or prevent pollutants in storm water and authorized non-storm water discharges as well as evaluate and revise their practices to meet changing conditions at the Facility. *Id.* This may include revising the SWPPP as required by Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit.

The MIP must measure the effectiveness of BMPs used to prevent or reduce pollutants in storm water and authorized non-storm water discharges, and Facility operators must revise the MIP whenever appropriate. See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B. The Industrial General Permit requires Facility operators to visually observe and collect samples of storm water discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the Facility's monitoring program will satisfy these objectives. *Id.*

The Previous Industrial General Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at the facility (1997 Industrial General Permit, § B(5)). The current Industrial General Permit now mandates that facility operators sample four (rather than two) storm water discharges from all drainage locations over the course of the reporting year (2015 Industrial General Permit, §§ XI(B)(2), (3)). Despite these requirements, Downtown Diversion Inc. submitted the Annual Report for the 2013-2014 reporting period with analysis data for only one (1) storm event; 2015-2016 reporting period with analysis data for only two (2) storm events. Also, the submitted Annual Reports for 2012-2013 reporting years have no sampling data. Downtown Diversion Inc. has failed to adequately explain why there is a lack of required sampling data.

Additionally, as previously described, Downtown Diversion Inc. had knowledge of previous Iron and COD exceedances but failed to consistently analyze their discharges for these parameters. This directly affected Downtown Diversion Inc.'s requirement to adequately detect and measure its storm water discharges to ensure comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit; and to adequately measure the effectiveness of BMPs in place at the Facility.

Downtown Diversion Inc. has been operating the Facility with an inadequately developed and/or inadequately implemented MIP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial General Permit. For example, the data in Attachment 1 indicates that Downtown Diversion Inc.'s monitoring program has not ensured that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial General Permit as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in storm water as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. Similarly, the data in Attachment 1 indicates that Downtown Diversion Inc.'s monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B.

As a result of Downtown Diversion Inc.'s failure to adequately develop and/or implement an adequate MIP at the Facility, Downtown Diversion Inc. has been in daily and continuous violation of the Industrial Storm Water Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Downtown Diversion Inc. will continue to be in violation of the monitoring and reporting requirement each day that Downtown Diversion Inc. fails to adequately develop and/or implement an effective MIP at the Facility. Downtown Diversion Inc. is subject to penalties for each violation of the Industrial General Permit and the CWA occurring for the last five (5) years.

The Downtown Diversion Inc. owners and/or Operators had numerous opportunities to sample but failed to do so, and failed to monitor all locations and all constituents as required. They are thus subject to penalties in accordance with the Industrial General Permit – punishable by a minimum of \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial General Permit, §XXI.Q.1).

#### **E. Unpermitted Discharges**

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by an NPDES Permit issued pursuant to Section 402 of the CWA. See 33 U.S.C. § 1311 (a), 1342. Downtown Diversion Inc. sought coverage for the Facility under the Industrial General Permit, which states that any discharge from an industrial Facility not in compliance with the Industrial General Permit must be either eliminated or permitted by a separate NPDES permit. Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (1). Because Downtown Diversion Inc. has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial General Permit, each and every discharge from the Facility described herein, not in compliance with the Industrial General Permit, has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301 (a) of the CWA, 33 U.S.C. § 131 I(a).

### **III. PERSON RESPONSIBLE FOR THE VIOLATIONS**

Downtown Diversion Inc. is responsible for the violations at the Facility located at 2424 East Olympic Boulevard, Building 3, Los Angeles, CA 90021 as described above.

#### IV. NAME AND ADDRESS OF NOTICING PARTY

##### OUR CLEAN WATERS

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#### VI. REMEDIES

As stated previously, OCW intends, at the close of the 60-day notice period or thereafter, to file suit under CWA section 505(a) against Downtown Diversion Inc. for the above-referenced violations. OCW will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, OCW will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against DOWNTOWN DIVERSION INC. in this action. **The CWA imposes civil penalty liability of up to \$51,570.00 per day of violation occurring after November 2, 2015 and \$37,500.00 per day of violation occurring before November 2, 2015, plus attorneys' fees and costs (33 U.S.C. § 1319(d); 40 C.F.R. § 19.4).** OCW will seek to recover such penalties, restitution, attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d). It should be noted that the statute of limitations is five (5) years for citizen enforcement actions brought pursuant to the federal Clean Water Act, bringing potential liabilities from February 23, 2012 to the present. Furthermore, actions are allowable under prior expired permits within the five (5) year period. (See *Illinois v. Outboard Marine, Inc.*, (7<sup>th</sup> Cir. 1982) 680 F.2d 473, 480-81 [relief granted for violations of an expired Permit]; *Sierra Club v. Aluminum Co. of Am.*, (N.D.N.Y. 1984) 585 F. Supp. 842, 853-854 [holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit]).

As noted above, OCW and its Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,



Scott L. Levitt, Esq.

## ATTACHMENT 1

### 1. Self-Reported Sampling Conducted by Downtown Diversion Inc. Demonstrating Non-compliance with BAT/BCT

Date of Sample	Discharge Point	Parameter	EPA Benchmark Value / NAL Value	Sample Value
10/5/2011	DP-01	Aluminum	0.75 mg/L	6.3 mg/L
10/5/2011	DP-01	Iron	1.0 mg/L	7.2 mg/L
10/5/2011	DP-01	Zinc	0.117 mg/L	0.820 mg/L
10/5/2011	DP-01	Total Suspended Solids	100 mg/L	130 mg/L
10/5/2011	DP-01	Specific Conductance	200 umhos/cm	900 umhos/cm
10/5/2011	DP-02	Aluminum	0.75 mg/L	7.6 mg/L
10/5/2011	DP-02	Iron	1.0 mg/L	8.7 mg/L
10/5/2011	DP-02	Zinc	0.117 mg/L	0.40 mg/L
10/5/2011	DP-02	Total Suspended Solids	100 mg/L	270 mg/L
10/5/2011	DP-02	Specific Conductance	200 umhos/cm	520 umhos/cm
10/5/2011	SP-1	Aluminum	0.75 mg/L	4.4 mg/L
10/5/2011	SP-1	Iron	1.0 mg/L	4.6 mg/L
10/5/2011	SP-1	Zinc	0.117 mg/L	0.630 mg/L
10/5/2011	SP-1	Total Suspended Solids	100 mg/L	110 mg/L
10/5/2011	SP-1	Chemical Oxygen Demand	120 mg/L	380 mg/L
10/5/2011	SP-1	Total Suspended Solids	100 mg/L	130 mg/L
10/5/2011	SP-1	Specific Conductance	200 umhos/cm	520 umhos/cm
10/5/2011	SP-1	Total Organic Carbon	100 mg/l	130 mg/l
3/17/2012	DP-01	Aluminum	0.75 mg/L	3.7 mg/L
3/17/2012	DP-01	Copper*	.0636 mg/L	0.077 mg/L
3/17/2012	DP-01	Iron	1.0 mg/L	5.6 mg/L
3/17/2012	DP-01	Zinc	0.117 mg/L	0.46 mg/L
3/17/2012	DP-01	Total Suspended Solids	100 mg/L	120 mg/L
3/17/2012	DP-01	Specific Conductance	200 umhos/cm	480 umhos/cm
3/17/2012	DP-02	Aluminum	0.75 mg/L	6.3 mg/L
3/17/2012	DP-02	Iron	1.0 mg/L	8.5 mg/L
3/17/2012	DP-02	Zinc	0.117 mg/L	0.41 mg/L
3/17/2012	DP-02	Total Suspended Solids	100 mg/L	210 mg/L
3/17/2012	DP-02	Specific Conductance	200 umhos/cm	330 umhos/cm
3/17/2012	SP-1	Aluminum	0.75 mg/L	1.1 mg/L
3/17/2012	SP-1	Iron	1.0 mg/L	1.6 mg/L
3/17/2012	SP-1	Zinc	0.117 mg/L	0.40 mg/L
3/17/2012	SP-1	Specific Conductance	200 umhos/cm	220 umhos/cm
2/27/2014	DP-01	Zinc	0.117 mg/L	0.17 mg/L
2/27/2014	DP-02	Aluminum	0.75 mg/L	3.6 mg/L
2/27/2014	DP-02	Iron	1.0 mg/L	4.4 mg/L
2/27/2014	DP-02	Zinc	0.117 mg/L	0.31 mg/L
2/27/2014	DP-02	Specific Conductance	200 umhos/cm	480 umhos/cm
2/27/2014	DP-02	Total Suspended Solids	100 mg/L	210 mg/L
2/27/2014	SP-1	Aluminum	0.75 mg/L	1.1 mg/L
2/27/2014	SP-1	Iron	1.0 mg/L	1.4 mg/L

2/27/2014	SP-1	Zinc	0.117 mg/L	0.13 mg/L
2/27/2014	SP-1	Specific Conductance	200 umhos/cm	710 umhos/cm
12/2/2014	DP-01	Copper*	.0636 mg/L	0.069 mg/L
12/2/2014	DP-01	Zinc	0.117 mg/L	0.21 mg/L
12/2/2014	DP-01	Chemical Oxygen Demand	120 mg/L	140 mg/L
12/2/2014	DP-01	Specific Conductance	200 umhos/cm	280 umhos/cm
12/2/2014	DP-02	Aluminum	0.75 mg/L	9.0 mg/L
12/2/2014	DP-02	Iron	1.0 mg/L	10.0 mg/L
12/2/2014	DP-02	Lead	0.0816 mg/L	0.090 mg/L
12/2/2014	DP-02	Zinc	0.117 mg/L	0.41 mg/L
12/2/2014	DP-02	Chemical Oxygen Demand	120 mg/L	130 mg/L
12/2/2014	DP-02	Specific Conductance	200 umhos/cm	590 umhos/cm
12/2/2014	DP-02	Total Suspended Solids	100 mg/L	290 mg/L
12/12/2014	DP-01	Aluminum	0.75 mg/L	1.6 mg/L
12/12/2014	DP-01	Iron	1.0 mg/L	2.1 mg/L
12/12/2014	DP-02	Aluminum	0.75 mg/L	3.1 mg/L
12/12/2014	DP-02	Iron	1.0 mg/L	3.6 mg/L
12/12/2014	DP-02	Zinc	0.117 mg/L	0.20 mg/L
12/12/2014	DP-02	Specific Conductance	200 umhos/cm	540 umhos/cm
1/5/2016	DP-001	Total Suspended Solids	100 mg/L	150 mg/L
1/5/2016	DP-002	Total Suspended Solids	100 mg/L	190 mg/L
1/5/2016	DP-004	Total Suspended Solids	100 mg/L	110 mg/L
1/11/2017	DP-01	Total Suspended Solids	100 mg/L	120 mg/L